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Secretary of State

**MISSISSIPPI CODE
TITLE 25 PUBLIC OFFICERS AND EMPLOYEES;
PUBLIC RECORDS**

CHAPTER 43 ADMINISTRATIVE PROCEDURES

[EFFECTIVE JULY 1, 2005]

Article 1. General Provisions.

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§ 25-43-1.101. Title. Statement of purpose.

(1) This chapter may be cited as the "Mississippi Administrative Procedures Law."

(2) This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter shall be construed as invalidating any rule or regulation adopted before July 1, 2005, if such rule or regulation was properly adopted in accordance with the law as it existed at the time of adoption. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rule-making that is not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Mississippi Administrative Procedures Law are: to provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; and to increase public participation in the formulation of administrative rules. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. This chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

(3) From and after July 1, 2005, any reference to the Mississippi Administrative Procedure Act, the Mississippi Administrative Procedures Act, the Mississippi Administrative Procedure Law, or the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq., Mississippi Code of 1972, shall be deemed to mean and refer to this chapter.

Sources: Laws, 2003, ch. 304, § 1, eff from and after July 1, 2005.

§ 25-43-1.102. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section unless the context otherwise requires:

(a) “Agency” means a board, commission, department, officer or other administrative unit of this state, including the agency head, and one or more members of the agency head or agency employees directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Legislature or any of its component units, the judiciary or any of its component units or the Governor. The term does not include a political subdivision of the state or any of the administrative units of a political subdivision. To the extent it purports to exercise authority subject to any provision of this chapter, an administrative unit otherwise qualifying as an “agency” must be treated as a separate agency even if the unit is located within or subordinate to another agency.

(b) “Agency head” or “head of the agency” means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(c) “Agency proceeding” or “proceeding” means the process by which an agency considers:

- (i) A declaratory opinion pursuant to Section 25-43-2.103, or
- (ii) A rule pursuant to Article III of this chapter.

(d) “Agency record” means the official rule-making record of an agency pursuant to Section 25-43-3.112.

(e) “Declaratory opinion” means an agency opinion rendered in accordance with the provisions of Section 25-43-2.103.

(f) “Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. An order shall be in writing signed by a person with authority to render the order, or if more than one (1) person has such authority by at least that number of such persons as jointly have the authority to render the order, or by a person authorized to render the order on behalf of all such persons. The term does not include an executive order issued by the Governor pursuant to Section 25-43-1.104, an opinion issued by the Attorney General pursuant to Section 7-5-25, an opinion issued by the Ethics Commission pursuant to Section 25-4-17, or a declaratory opinion rendered in accordance with Section 25-43-2.103.

(g) “Person” means an individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(h) “Provision of law” or “law” means the whole or a part of the federal or state Constitution, or of any federal or state (i) statute, (ii) case law or common law, (iii) rule of court, (iv) executive order, or (v) rule or order of an administrative agency.

(i) “Rule” means the whole or a part of an agency regulation or other statement of general applicability that implements, interprets or prescribes:

- (i) Law or policy, or
- (ii) The organization, procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule. “Rule” does not include:

1. A regulation or statement concerning only the internal management of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public;
2. A regulation or statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations or inspections, settling commercial disputes, negotiating commercial arrangements or in the defense, prosecution or settlement of cases, if disclosure of the criteria or guidelines would:
 - a. Enable law violators to avoid detection;
 - b. Facilitate disregard of requirements imposed by law; or
 - c. Give a clearly improper advantage to persons who are in an adverse position to the state;
3. A regulation or statement that only establishes specific prices to be charged for particular goods or services sold by an agency;
4. A regulation or statement concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property;
5. A regulation or statement relating only to the use of a particular facility or property owned, operated or maintained by the state or any of its subdivisions, if the substance of the regulation or statement is adequately indicated by means of signs or signals to persons who use the facility or property;
6. A regulation or statement directly related only to inmates of a correctional or detention facility, students enrolled in an educational institution or patients admitted to a hospital, if adopted by that facility, institution or hospital;
7. A form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form;
8. An agency budget;
9. A compact or agreement between an agency of this state and one or more agencies of another state or states; or
10. An opinion of the Attorney General pursuant to Section 7-5-25, an opinion of the ethics Commission pursuant to Section 25-4-17, or an Executive Order of the Governor.

(j) "Rule-making" means the process for formulation and adoption of a rule.

Sources: Laws, 2003, ch. 304, § 2; Laws, 2005, ch. 499, § 34, eff from and after July 1, 2005.

§ 25-43-1.103. *Applicability and relation to other law.*

- (1) This chapter applies to all agencies and all proceedings not expressly exempted under this chapter.
- (2) This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.
- (3) Specific statutory provisions which govern agency proceedings and which are in conflict with any of the provisions of this chapter shall continue to be applied to all proceedings of any such agency to the extent of such conflict only.
- (4) The provisions of this chapter shall not be construed to amend, repeal or supersede the provisions of any other law; and, to the extent that the provisions of any other law

conflict or are inconsistent with the provisions of this chapter, the provisions of such other law shall govern and control.

- (5) An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred upon other persons by any provision of law are not substantially prejudiced.

Sources: Laws, 2003, ch. 304, § 3, eff from and after July 1, 2005.

§ 25-43-1.104. *Suspension of chapter's provisions when necessary to avoid loss of federal funds or services.*

- (1) To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the state, the Governor, by executive order, may suspend, in whole or in part, one or more provisions of this chapter. The Governor, by executive order, shall declare the termination of a suspension as soon as it is no longer necessary to prevent the loss of funds or services from the United States.
- (2) If any provision of this chapter is suspended pursuant to this section, the Governor shall promptly report the suspension to the Legislature. The report may include recommendations concerning desirable legislation that may be necessary to conform this chapter to federal law, including the exemption, if appropriate, of a particular program from the provisions of this chapter.

Sources: Laws, 2003, ch. 304, § 4, eff from and after July 1, 2005.

§ 25-43-1.105. *Waiver of rights.*

Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter, or by any rule made pursuant to this chapter.

Sources: Laws, 2003, ch. 304, § 5, eff from and after July 1, 2005.

§25-43-1.106. *Filings with agency; service; computation of time.*

- (1) (a) Whenever, under this act, a party or any person is permitted or required to file with an agency any pleading, motion or other document, filing must be made by delivery of the document to the agency, by mailing it to the agency or by transmitting it to the agency by electronic means, including, but not limited to, facsimile transfer or e-mail. Filing by electronic means is complete when the electronic equipment being used by the agency acknowledges receipt of the material. If the equipment used by the agency does not automatically acknowledge transmission, service is not complete until the filing party obtains an acknowledgment from the agency. Filing by mail is complete upon receipt by the agency.
(b) The agency may implement this section by agency rule.
- (2) (a) Whenever service is required by this chapter, and whether the service is made by a party, an agency or a presiding officer, service of orders, notices, pleadings, motions and other documents upon a party shall be made by delivering a copy to the party, by

transmitting it to the party by electronic means, including, but not limited to, facsimile transfer or e-mail, or by mailing it to the party at the party's last known address. Delivery of a copy means handing it to a party, leaving it at the office of a party with a person in charge thereof, or leaving it at the dwelling house or usual place of abode of the party with some person of suitable age and discretion then residing therein. Service by electronic means is complete when the electronic equipment being used by the party being served acknowledges receipt of the material. If the equipment used by the party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgment from the recipient. Service by mail is complete upon mailing.

(b) Whenever service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney.

(c) Whenever an agency issues an order or serves a notice or other document, the order or notice or other document shall be dated and shall be deemed to have been issued on the day it is served on the parties to the matter. If the order or notice or other document is to be served by mail, it shall be dated and shall be deemed to have been issued on the day it is mailed.

- (3) (a) In computing any period of time prescribed or allowed by this Article I, by order of an agency, or by any applicable statute or agency rule, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, as defined by statute, or any other day when the agency's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday or any other day when the agency's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.

(b) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice, order, pleading, motion or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

Sources: Laws, 2003, ch. 304, § 6, eff from and after July 1, 2005.

§ 25-43-1.107. *Report of conflicts between chapter and other laws; conforming legislation; compliance.*

Every agency as defined in this chapter shall, no later than October 1, 2003, file with the Secretary of the Senate and the Clerk of the House a report which outlines any conflicts between this act and any other laws affecting the agency. This report shall include proposed legislation to bring the other laws into conformity with the requirements of this act. The Secretary of State shall, no later than December 1, 2003, file with the Secretary of the Senate and the Clerk of the House a list of sections which the Secretary of State believes conflict with this act. The Secretary of the Senate and the Clerk of the House shall maintain a list of agencies which have complied with this section.

Sources: Laws, 2003, ch. 304, § 27, eff from and after passage (approved Feb. 19, 2003.)

Article 2. *Public Access to Agency Law and Policy.*

Sec.

- 25-43-2.101. Publication, compilation, indexing and public inspection of rules.
- 25-43-2.102. Public inspection and indexing of agency orders.
- 25-43-2.103. Declaratory opinions.
- 25-43-2.104. Required rule-making.
- 25-43-2.105. Model rules of procedure.

§ 25-43-2.101. *Publication, compilation, indexing and public inspection of rules.*

- (1) Subject to the provisions of this chapter, the Secretary of State shall prescribe a uniform numbering system, form, style and transmitting format for all proposed and adopted rules caused to be published by him and, with prior approval of each respective agency involved, may edit rules for publication and codification without changing the meaning or effect of any rule.
- (2) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule. Upon proper filing of proposed rules, the Secretary of State shall publish them in the administrative bulletin as expeditiously as possible. The administrative bulletin must contain:
 - (a) Notices of proposed rule adoption prepared so that the text of the proposed rule shows the text of any existing rule proposed to be changed and the change proposed;
 - (b) Any other notices and materials designated by law for publication therein; and
 - (c) An index to its contents by subject.
- (3) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule. Upon proper filing of newly adopted rules, the Secretary of State shall publish them as expeditiously as possible. The administrative bulletin must contain:
 - (a) Newly filed adopted rules prepared so that the text shows the text of any existing rule being changed and the change being made;
 - (b) Any other notices and materials designated by law for publication therein; and
 - (c) An index to its contents by subject.
- (4) The Secretary of State retains the authority to reject proposed and newly adopted rules not properly filed in accordance with the Secretary of State's rules prescribing the numbering system, form, style or transmitting format for such filings. The Secretary of State shall not be empowered to reject filings for reasons of the substance or content or any proposed or newly adopted rule. The Secretary of State shall notify the agency of its rejection of a proposed or newly adopted rule as expeditiously as possible and accompany such notification with a stated reason for the rejection. A rejected filing of a proposed or newly adopted rule does not constitute filing pursuant to Section 25-43-3.101 et seq. of this chapter.
- (5) (a) The Secretary of State shall cause an administrative code to be compiled, indexed by subject and published in a format prescribed by the Secretary of State by rule. All of the effective rules of each agency must be published and indexed in that publication. The

Secretary of State shall also cause supplements to the administrative code to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule.

(b) The Joint Legislative Committee on Compilation, Revision and Publication of Legislation is hereby authorized to contract with a reputable and competent publishing company on such terms and conditions and at such prices as may be deemed proper to digest, compile, annotate, index and publish the state agency rules and regulations.

- (6) (a) Copyrights of the Mississippi Administrative Code, including, but not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, authority notes, numerical lists and codification guides, other than the actual text of rules or regulations, shall be taken by and in the name of the publishers of said compilation. Such publishers shall thereafter promptly assign the same to the State of Mississippi and said copyright shall be owned by the state.
- (b) Any information appearing on the same leaf with the text of any rule or regulation may be incidentally reproduced in connection with the reproduction of such rule or regulation, if such reproduction is for private use and not for resale.
- (7) The Secretary of State may omit from the administrative bulletin or code any proposed or filed adopted rule, the publication in hard copy of which would be unduly cumbersome, expensive or otherwise inexpedient, if:
- (a) Knowledge of the rule is likely to be important to only a small class of persons;
 - (b) On application to the issuing agency, the proposed or adopted rule in printed or processed form is made available at no more than its cost of reproduction; and
 - (c) The administrative bulletin or code contains a notice stating in detail the specific subject matter of the omitted proposed or adopted rule and how a copy of the omitted material may be obtained.
- (8) The administrative bulletin and administrative code with supplements must be furnished to designated officials without charge and to all subscribers at a reasonable cost to be determined by the Secretary of State. Each agency shall also make available for public inspection and copying those portions of the administrative bulletin and administrative code containing all rules adopted or used by the agency in the discharge of its functions, and the index to those rules.

Sources: Laws, 2003, ch. 304, § 7, eff from and after July 1, 2005.

§ 25-43-2.102. *Public inspection and indexing of agency orders.*

- (1) In addition to other requirements imposed by any provision of law, and subject to any confidentiality provisions established by law, each agency shall make all written final orders available for public inspection and copying and index them by name and subject.
- (2) A written final order available for public inspection pursuant to subsection (1) may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in subsection (1) of this section. This provision is inapplicable to any person who has actual, timely knowledge of the order. The burden of proving that knowledge is on the agency.

Sources: Laws, 2003, ch. 304, § 8, eff from and after July 1, 2005.

§ 25-43-2.103. *Declaratory opinions.*

- (1) Any person with substantial interest in the subject matter may make a written request of an agency for a declaratory opinion as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency. Such written request must clearly set forth the specific facts upon which an opinion is asked for and shall be limited to a single transaction or occurrence. An agency, through the agency head or its designee(s) by rule, shall issue a declaratory opinion in response to a written request for that opinion unless the agency determines that issuance of the opinion under the circumstances would be contrary to a rule adopted in accordance with subsection (2) of this section.
- (2) Each agency shall issue rules that provide for: (a) the form, contents and filing of written requests for declaratory opinions; (b) the procedural rights of persons in relation to the written requests; and (c) the disposition of the written requests. Those rules must describe the classes of circumstances in which the agency will not issue a declaratory opinion.
- (3) Within forty-five (45) days after receipt of a written request for a declaratory opinion, an agency, in writing, shall:
 - (a) Issue an opinion declaring the applicability of the statute, rule or order in question to the specified circumstances;
 - (b) Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or
 - (c) Decline to issue a declaratory opinion, stating the reasons for its action.
- (4) A copy of all opinions issued in response to a written request for a declaratory opinion must be mailed promptly to the requesting person.
- (5) (a) When any person receives a declaratory opinion from the agency and shall have stated all the facts to govern such opinion, the agency shall take no civil or criminal action against such person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No declaratory opinion shall be given or considered if the opinion is requested after suit is filed or prosecution begun. Any declaratory opinion rendered pursuant to this chapter shall not be binding or effective for any third party or person other than the agency issuing the declaratory opinion and the person to whom the opinion is issued and shall not be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.
 - (b) The authority of persons to request and receive agency declaratory opinions in no way affects the ability of any person authorized by Section 7-5-25 to request a legal opinion from the Attorney General.
 - (c) Subject to any confidentiality provisions established by law, each agency shall make all declaratory opinions available for public inspection and copying and shall index them by name and subject, unless information contained within such opinions is confidential by statute or exempt from public disclosure pursuant to another provision of law.
- (6) Without in any way limiting a person's right to request and receive a declaratory opinion under this section, or an agency's duty to issue a declaratory opinion under this section, nothing contained in this section shall prohibit an agency from providing informal

responses or advice, orally or in writing, to any inquiries or requests for information submitted to the agency. Informal responses shall be considered a declaratory opinion under this section.

Sources: Laws, 2003, ch. 304, § 9; Laws, 2005, ch. 499; § 35, eff from and after July 1, 2005.

§ 25-43-2.104. *Required rule-making.*

In addition to other rule-making requirements imposed by law, each agency shall:

- (a) Adopt as a rule a description of the organization of the agency which states the general course and method of its operations and where and how the public may obtain information or make submissions or requests;
- (b) Adopt rules of practice setting forth the nature and requirements of all formal and informal proceedings available to the public.

Sources: Laws, 2003, ch. 304, § 10, eff from and after July 1, 2005.

§ 25-43-2.105. *Model rules of procedure.*

In accordance with the rule-making requirements of this chapter, the Secretary of State shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules must deal with all general functions and duties performed in common by several agencies. Each agency may adopt as much of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rule-making requirements of this chapter.

Sources: Laws, 2003, ch. 304, § 11, eff from and after July 1, 2005.

Article 3. *Rule-Making Adoption and Effectiveness of Rules.*

Sec.

- 25-43-3.101. Advice on possible rules before notice of proposed rule adoption.
- 25-43-3.102. Public rule-making docket.
- 25-43-3.103. Notice of proposed rule adoption.
- 25-43-3.104. Public participation
- 25-43-3.105. Economic impact statement, requirement and conditions.
- 25-43-3.106. Time and manner of rule adoption.
- 25-43-3.107. Variance between adopted rule and published notice of proposed rule adoption.
- 25-43-3.108. Exemption from public rule-making procedures for temporary rules.
- 25-43-3.109. Contents, style, and form of rule.
- 25-43-3.110. Agency rule-making record.
- 25-43-3.111. Invalidity of rules not adopted according to article; time limitation.
- 25-43-3.112. Filing of rules.
- 25-43-3.113. Effective date of rules.
- 25-43-3.114. Review by agency.

§ 25-43-3.101. *Advice on possible rules before notice of proposed rule adoption.*

- (1) In addition to seeking information by other methods, an agency, before filing of a notice of proposed rule adoption under Section 25-43-3.103, may solicit comments from the public on a subject matter of possible rule-making under active consideration within the agency by causing notice to be filed with the Secretary of State for publication in the administrative bulletin of the subject matter and indicating where, when and how persons may comment.
- (2) Each agency may also appoint committees of nonagency personnel or other members of the public to comment, before filing of a notice of proposed rule adoption under Section 25-43-3.103, on the subject matter of a possible rule-making under active consideration within the agency. The membership of those committees must be filed with the Secretary of State for publication in the administrative bulletin.

Sources: Laws, 2003, ch. 304, § 12, eff from and after July 1, 2005.

§ 25-43.3.102. *Public rule-making docket.*

- (1) Each agency shall maintain a current, public rule-making docket.
- (2) The rule-making docket may, but need not, contain a listing of the subject matter of possible rules currently under active consideration within the agency for proposal under Section 25-43-3.103 and the name and address of agency personnel with whom persons may communicate with respect to the matter.
- (3) The rule-making docket must list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by proper filing with the Secretary of State of a notice of proposed rule adoption, to the time it is terminated by the filing with the Secretary of State of a notice of termination or the rule becoming effective. For each pending rule-making proceeding, the docket must indicate:
 - (a) The subject matter of the proposed rule;
 - (b) A citation to all published notices relating to the proceeding;
 - (c) Where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected;
 - (d) The times during which written submissions may be made;
 - (e) If applicable, where and when oral presentations may be made;
 - (f) Where any economic impact statement and written requests for the issuance of and other information concerning an economic impact statement of the proposed rule may be inspected;
 - (g) The current status of the proposed rule;
 - (h) The date of the rule's adoption; and
 - (i) When the rule will become effective.

Sources: Laws, 2003, ch. 304, § 13, eff from and after July 1, 2005.

§ 25-43-3.103. *Notice of proposed rule adoption.*

- (1) At least twenty-five (25) days before the adoption of a rule an agency shall cause notice of its contemplated action to be properly filed with the Secretary of State for publication in the administrative bulletin. The notice of proposed rule adoption must include:
 - (a) A short explanation of the purpose of the proposed rule and the agency's reasons for proposing the rule;
 - (b) The specific legal authority authorizing the promulgation of the rules;
 - (c) A reference to all rules repealed, amended or suspended by the proposed rule;
 - (d) Subject to Section 25-43-2.101(5), the text of the proposed rule;
 - (e) Where, when and how persons may present their views on the proposed rule; and
 - (f) Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.
- (2) Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of proposed rule adoption to be provided to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of proposed rule adoptions. An agency may mail the copy to the person and may charge the person a reasonable fee for such service, which fee may be in excess of the actual cost of providing the person with a mailed copy. Alternatively, the agency may provide the copy via the Internet or by transmitting it to the person by electronic means, including, but not limited to, facsimile transfer or e-mail at no charge to the person, if the person consents to this form of delivery.

Sources: Laws, 2003, ch. 304, § 14, eff from and after July 1, 2005.

§ 25-43.3.104. *Public participation.*

- (1) For at least twenty-five (25) days after proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall afford persons the opportunity to submit, in writing, argument, data and views on the proposed rule.
- (2) (a) An agency, in its discretion, may schedule an oral proceeding on any proposed rule. However, an agency shall schedule an oral proceeding on a proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule adoption, a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. At that proceeding, persons may present oral or written argument, data and views on the proposed rule.
 - (b) An oral proceeding on a proposed rule, if required, may not be held earlier than twenty (20) days after notice of its location and time is properly filed with the Secretary of State for publication in the administrative bulletin. Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of the location and time of the oral proceeding to be mailed to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of the proposed rule adoptions.

(c) The agency, a member of the agency, or another presiding officer designated by the agency shall preside at a required oral proceeding on a proposed rule. Oral proceedings must be open to the public and may be recorded by stenographic or other means.

(d) An agency may issue rules for the conduct of oral rule-making proceedings or prepare reasonable guidelines or procedures for the conduct of any such proceedings. Those rules may include, but not be limited to, provisions calculated to prevent undue repetition in the oral proceedings.

Sources: Laws, 2003, ch. 304, 1§ 15, eff from and after July 1, 2005.

§ 25-43-3.105. *Economic impact statement, requirement and conditions.*

- (1) Prior to giving the notice required by Section 25-43-3.103, each agency proposing the adoption of a rule or significant amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. For purposes of this section, a “significant amendment” means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars (\$100,000.00).
- (2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or significant amendment to an existing rule imposing a duty, responsibility or requirement on any person, except as provided in subsection (7) of this section. The economic impact statement shall include the following:
 - (a) A description of the need for and the benefit which will likely accrue as the result of the proposed action;
 - (b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;
 - (c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;
 - (d) An analysis of the impact of the proposed rule on small businesses;
 - (e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;
 - (f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;
 - (g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and
 - (h) A detailed statement of the data and methodology used in making estimates required by this subsection.
- (3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding

or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

- (4) A concise summary of the economic impact statement must be properly filed with the Secretary of State for publishing in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.
- (5) The properly filed summary of the economic impact statement must also indicate where persons may obtain copies of the full text of the economic impact statement and where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.
- (6) If the agency has made a good faith effort to comply with the requirements of subsections (1) and (2) of this section, the rule may not be invalidated on the ground that the contents of the economic impact statement are insufficient or inaccurate.
- (7) This section does not apply to the adoption of:
 - (a) Any rule which is required by the federal government pursuant to a state/federal program delegation agreement or contract;
 - (b) Any rule which is expressly required by state law; and
 - (c) A temporary rule adopted pursuant to Section 25-43-3.108.

Sources: Laws, 2003, ch. 304, § 16, eff from and after July 1, 2005.

§ 25-43-3.106. *Time and manner of rule adoption.*

- (1) An agency may not adopt a rule until the period for making written submissions and oral presentations has expired.
- (2) Following the proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by proper filing with the Secretary of State of a notice to that effect for publication in the administrative bulletin.
- (3) Before the adoption of a rule, an agency shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions, and any economic impact statement, provided for by this Article III.
- (4) Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

Sources: Laws, 2003, ch. 304, § 17, eff from and after July 1, 2005.

§ 25-43-3.107. *Variance between adopted rule and published notice of proposed rule adoption.*

- (1) An agency shall not adopt a rule that differs from the rule proposed in the notice of proposed rule adoption on which the rule is based unless all of the following apply:

- (a) The differences are within the scope of the matter announced in the notice of proposed rule adoption and are in character with the issues raised in that notice;
 - (b) The differences are a logical outgrowth of the contents of that notice of proposed rule adoption and the comments submitted in response thereto; and
 - (c) The notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question.
- (2) In determining whether the notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question, an agency shall consider all of the following factors:
- (a) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
 - (b) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of proposed rule adoption; and
 - (c) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of proposed rule adoption.

Sources: Laws, 2003, ch. 304, § 18, eff from and after July 1, 2005.

§ 25-43-3.108. *Exemption from public rule-making procedures for temporary rules.*

If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty-five (25) days' notice and states in writing its reasons for that finding, it may proceed without prior notice of hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than one hundred twenty (120) days, renewable once for a period not exceeding ninety (90) days, but the adoption of an identical rule under subsection (1) of this section is not precluded.

Sources: Laws, 2003, ch. 304, § 19, eff from and after July 1, 2005.

§ 25-43-3.109. *Contents, style and form of rule.*

- (1) Each rule adopted by an agency must contain the text of the rule and:
 - (a) The date the agency adopted the rule;
 - (b) An indication of any change between the text of the proposed rule contained in the published notice of proposed rule adoption and the text of the rule as finally adopted, with the reasons for any substantive change;
 - (c) Any changes to the information contained in the notice of proposed rule adoption as required by subsections (a), (b), or (c) of Section 25-43-3.103;
 - (d) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and
 - (e) The effective date of the rule if other than that specified in Section 25-43-3.113(1).
- (2) To the extent feasible, each rule should be written in clear and concise language understandable to persons who may be affected by it.

- (3) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the agency rules must fully identify the incorporated matter with an appropriate citation. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public. The rules must state if copies of the incorporated matter are available from the agency issuing the rule or where copies of the incorporated matter are available from the agency of the United States, this state, another state or the organization or association originally issuing that matter.
- (4) In preparing its rules pursuant to this Article III, each agency shall follow the uniform numbering system, form and style prescribed by the Secretary of State.

Sources: Laws, 2003, ch. 304, § 20, eff from and after July 1, 2005.

§ 25-43-3.110. *Agency rule-making record.*

- (1) An agency shall maintain an official rule-making record for each rule it (a) proposes or (b) adopts. The agency has the exclusive authority to prepare and exclusive authority to certify the record or any part thereof, including, but not limited to, any transcript of the proceedings, and the agency's certificate shall be accepted by the court and by any other agency. The record must be available for public inspection.
- (2) The agency rule-making record must contain:
 - (a) Copies of all notices of proposed rule-making or oral proceedings or other publications in the administrative bulletin with respect to the rule or the proceeding upon which the rule is based;
 - (b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
 - (c) All written requests, submissions and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal or adoption of the rule or the proceeding upon which the rule is based;
 - (d) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations. The word "transcript" includes a written transcript, a printed transcript, an audible audiotape or videotape that is indexed and annotated so that it is readily accessible and any other means that the agency may have by rule provided for the reliable and accessible preservation of the proceeding;
 - (e) A copy of any economic impact statement prepared for the proceeding upon which the rule is based; and
 - (f) A copy of the rule and related information set out in Section 25-43-3.109 as filed in the Office of the Secretary of State.

- (3) The agency shall have authority to engage such persons and acquire such equipment as may be reasonably necessary to record and preserve in any technically and practicably feasible manner all matters and all proceedings had at any rule-making proceeding.
- (4) Upon judicial review, the record required by this section constitutes the official agency rule-making record with respect to a rule. Except as otherwise required by a provision of law, the agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

Sources: Laws, 2003, ch. 304, § 21, eff from and after July 1, 2005.

§ 25-43-3.111. *Invalidity of rules not adopted according to article; time limitation.*

- (1) A rule adopted after July 1, 2005, is invalid unless adopted in substantial compliance with the provisions of Sections 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a notice of proposed rule adoption to any person as required by Section 25-43-3.103(2) does not invalidate a rule.
- (2) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of Sections 25-43-3.102 through Section 25-43-3.110 must be commenced within one (1) year after the effective date of the rule.

Sources: Laws, 2003, ch. 304, § 22, eff from and after July 1, 2005.

§ 25-43-3.112. *Filing of rules.*

An agency shall file in the Office of the Secretary of State each rule it adopts and all rules existing on July 1, 2005, that have not previously been filed. The filing must be done as soon after adoption of the rule as is practicable. At the time of filing, each rule adopted after July 1, 2005, must have included in or attached to it the material set out in Section 25-43-3.109. The Secretary of State shall affix to each rule and statement a certification of the date of filing and keep a permanent register open to public inspection of all filed rules and attached material. In filing a rule, each agency shall use a standard format prescribed by the Secretary of State.

Sources: Laws, 2003, ch. 304, § 23, eff from and after July 1, 2005.

§ 25-43-3.113. *Effective date of rules.*

- (1) Except to the extent subsection (2) or (3) of this section provides otherwise, each rule adopted after July 1, 2005, becomes effective thirty (30) days after its proper filing in the Office of the Secretary of State.
- (2) (a) A rule becomes effective on a date later than that established by subsection (1) of this section if a later date is required by another statute or specified in the rule.
- (b) A rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section if the agency establishes such an effective date and finds that:

- i. It is required by Constitution, statute or court order;
 - ii. The rule only confers a benefit or removes a restriction on the public or some segment thereof;
 - iii. The rule only delays the effective date of another rule that is not yet effective; or
 - iv. The earlier effective date is necessary because of imminent peril to the public health, safety or welfare.
- (c) The finding and a brief statement of the reasons therefor required by paragraph (b) of this subsection must be made a part of the rule. In any action contesting the effective date of a rule made effective under paragraph (b) of this subsection, the burden is on the agency to justify its finding.
- (d) A temporary rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section.
- (e) Each agency shall make a reasonable effort to make known to persons who may be affected by it a rule made effective before any date established by subsection (1) of this section.
- (3) This section does not relieve any agency from compliance with any provision of law requiring that some or all of its rules be approved by other designated officials or bodies before they become effective.

Sources: Laws, 2003, ch. 304, § 24, eff from and after July 1, 2005.

§ 25-43-3.114. *Review by agency.*

At least every five (5) years, each agency shall review all of its rules to determine whether any rule should be repealed, amended or a new rule adopted.

Sources: Laws, 2003, ch. 304; § 25, eff from and after July 1, 2005.